

COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

OPEN MEETING ITEM
ORIGINAL



0000003599

ARIZONA CORPORATION COMMISSION

DATE: July 13, 2004
DOCKET NO: RR-03639A-04-0377
TO ALL PARTIES:

AZ CORP COMMISSION
DOCUMENT CONTROL

2004 JUL 13 A 10:53

RECEIVED

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

**UNION PACIFIC RAILROAD
(UPGRADE CROSSING)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JULY 22, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 3 AND 4, 2004

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

JUL 13 2004

DOCKETED BY	
-------------	--

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 THE ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO UPGRADE A
11 CROSSING OF THE UNION PACIFIC
12 RAILROAD AT 10th STREET, IN THE CITY OF
13 PHOENIX, MARICOPA COUNTY, ARIZONA,
14 AAR/DOT NO. 916-290-T.

DOCKET NO. RR-03639A-04-0377

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: June 24, 2004

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

13 APPEARANCES: Mr. Timothy Sabo, Staff Attorney, Legal Division, on
14 behalf of the Utilities Division of the Arizona
Corporation Commission.

15 **BY THE COMMISSION:**

16 On May 20, 2004, the Arizona Department of Transportation ("ADOT") submitted to the
17 Arizona Corporation Commission ("Commission") a request for an Opinion and Order for the
18 approval of an agreement between ADOT and the Union Pacific Railroad Company ("Railroad") to
19 upgrade the Railroad's crossing at 10th Street in the City of Phoenix, Arizona, at AAR/DOT No. 916-
20 290-T ("Application").

21 On June 3, 2004, by Procedural Order, the Application was set for a hearing and ADOT was
22 ordered to notify any interested party of the Application and the hearing.

23 On June 17, 2004, ADOT certified that notice had been provided pursuant to the terms of the
24 Procedural Order.

25 On June 24, 2004, a full public hearing was held before a duly authorized Administrative Law
26 Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing, the
27 matter was taken under advisement pending submission of a recommended Opinion and Order to the
28 Commission.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On May 20, 2004, ADOT filed an Application in which it requested an Opinion and Order from the Commission approving an agreement between ADOT and the Railroad for the upgrade of a crossing to replace existing crossbucks and to install automatic warning devices at 10th Street, in the City of Phoenix, Arizona, at AAR/DOT No. 916-290-T.

2. On June 17, 2004, ADOT filed certification that it had provided notice by registered U.S. mail of the Application and hearing thereon.

3. A hearing was held as scheduled on June 24, 2004.

4. The Application provides for the Railroad to replace existing crossbucks and to upgrade the crossing with new stop signs and with new automatic cantilevered flashing light signals.

5. Staff testified that the cost apportionment for the installation of the crossing upgrade as provided in the Application was proper.

6. Staff has recommended that the Application be approved.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and over the subject matter of the Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and 40-337.01.

2. Notice of the Application was provided in accordance with the law.

3. Installation of the crossing upgrade is necessary for the public's convenience and safety.

4. The Application should be approved as recommended by Staff.

5. After installation of the crossing, the Railroad should maintain the crossing in accordance with A.A.C. R14-5-104.

...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application is hereby approved.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the crossing upgrade as described in the Application within fifteen months from the effective date of this Decision.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the Commission, in writing, within ten days of both the commencement and the completion of the crossing upgrade, pursuant to A.A.C. R14-5-104.

IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific Railroad Company shall maintain the crossing in compliance with the A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2004.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

MES:mlj

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO. RR-03639A-04-0377

3
4 John Syers
ADOT-Utility & Railroad
205 S. 17th Avenue
5 Phoenix, Arizona 85007-3213

6 David Gibson
ADOT - Traffic Records Section
7 206 S. 17th Avenue, MD-064R
Phoenix, AZ 85007

8
9 Freddy Chung
UNION PACIFIC RAILROAD COMPANY
19100 Slover Avenue
10 Bloomington, CA 92316

11 Christopher Kempley, Chief Counsel
Legal Division
12 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
13 Phoenix, Arizona 85007

14 Don Thompson
Railroad Safety Section
15 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
16 Phoenix, Arizona 85007

17

18

19

20

21

22

23

24

25

26

27

28